

SEP 08 2003

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

2003 SEP -8 A 11: 26

SENSITIVE

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

Pre-MUR: 412
DATE RECEIVED: February 27, 2003¹
DATE ACTIVATED: March 25, 2003

EXPIRATION OF STATUTE OF
LIMITATIONS: May 31, 2003²

MUR: 5357
DATE COMPLAINT FILED: March 25, 2003
DATE OF NOTIFICATION: March 26, 2003
DATE ACTIVATED: March 25, 2003

EXPIRATION OF STATUTE OF
LIMITATIONS: May 31, 2003

COMPLAINANTS:

Centex Corporation
Counsel for Centex Corporation

RESPONDENTS:

Centex Construction Group, Inc.
Centex-Rooney Construction Co., Inc.
Bob L. Moss
Gary Esporin
Bruce Moldow
Larry D. Casey
David Hamlin
Gary Glenewinkel
Albert Petrangeli

¹ Centex's February 27, 2003 correspondence to the Commission, which initiated this matter as Pre-MUR 412, has characteristics of both a *sua sponte* submission against itself and a complaint against others. On March 25, 2003, following discussions with this Office, Centex submitted a properly notarized complaint.

² The statute of limitations ("SOL") date listed in CMS is July 25, 2001, which is five years from the first contribution listed in the Complaint. However, all evidence provided to date indicates that the alleged reimbursement scheme did not begin until Centex's 1998 fiscal year, April 1997 - March 1998. This Office proposes to change the CMS SOL date to May 31, 2003, which is five years from the approximate time that bonuses were distributed which included the first reimbursements. It should be noted that the alleged illegal activity continued at least through June 2002 and that over 90% of the alleged violations have SOL dates of May 31, 2004 or later. However, this Office believes identifying May 31, 2003 as the earliest possible SOL date gives the most accurate "snapshot" of the case.

4582 904 40 52

Kathryn Young
Robin McGlothern
Ted Adams
Mike Wood
Sandra Moss
Raymond C. Southern

RELEVANT STATUTES:

2 U.S.C. §§ 437g(a)(5)(B), 437g(d)
2 U.S.C. § 441b(a)
2 U.S.C. § 441f
11 C.F.R. § 103.3(b)(2)
11 C.F.R. § 104.8(c)
11 C.F.R. § 104.8(e)
11 C.F.R. § 110.1(g)
11 C.F.R. § 110.4(b)(1)(iii)

INTERNAL REPORTS CHECKED:

Disclosure reports; Commission indices

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

Centex Corporation ("Centex"), speaking through its attorneys, notified the Commission that Centex-Rooney Construction Co., Inc. ("Rooney"), which is a separate, incorporated division of a Centex subsidiary, Centex Construction Group, Inc. ("CCG") as well as other persons, appear to have violated the Federal Election Campaign Act. The Centex complaint and the responses to it reveal that: (1) Rooney employees were encouraged by Bob Moss, then-CEO of Rooney (and later CEO of CCG), to make political contributions as a means of relationship-building with public officials; (2) these employees, who included top officers of Rooney and, in some cases, their spouses, were asked to inform either Mr. Moss or Gary Esporin, then-CFO of Rooney (and later CFO of CCG) of their contributions and to send copies of their contribution checks to either Mr. Moss or Mr. Esporin; (3) although Mr. Moss may have solicited contributions to some specific officials, it appears that employees were able to submit copies of

23-04-406-2855

1 checks for self-initiated contributions; and (4) the political contributions were then reimbursed to
2 each employee, grossed up to offset any tax liability, through a special "discretionary
3 management bonus."

4 Centex, which has produced records from its internal investigation of this matter,
5 represents that it wishes to cooperate fully with the Commission in resolving this matter. Centex
6 has requested that the Commission find reason to believe that Rooney violated 2 U.S.C.
7 § 441b(a) by making corporate contributions and 2 U.S.C. § 441f by making federal
8 contributions in the name of another; but also that the violations were not knowing and willful.
9 Centex further requests that the Commission authorize the Office of General Counsel to enter
10 into pre-probable cause conciliation with Rooney.

11 **II. FACTUAL AND LEGAL ANALYSIS**

12 **A. LAW**

13 Corporations are prohibited from making contributions or expenditures from their general
14 treasury funds in connection with any election of any candidate for federal office. 2 U.S.C.
15 § 441b(a). Section 441b(a) also makes it unlawful for any candidate, political committee, or
16 other person knowingly to accept or receive a contribution prohibited by section 441b(a). In
17 addition, section 441b(a) prohibits any officer or director of any corporation from consenting to
18 any contribution or expenditure by the corporation.

19 The Act provides that no person shall make a contribution in the name of another person
20 or knowingly permit his or her name to be used to effect such a contribution, and that no person
21 shall knowingly accept a contribution made by one person in the name of another person.

9582 904 10 23

1 2 U.S.C. § 441f.³ Commission regulations also prohibit persons from knowingly assisting in
2 making contributions in the name of another. *See* 11 C.F.R. § 110.4(b)(1)(iii).

3 The Act addresses violations of law that are knowing and willful. *See* 2 U.S.C.
4 §§ 437g(a)(5)(B) and 437g(d). The knowing and willful standard requires knowledge that one is
5 violating the law. *Federal Election Commission v. John A. Dramesi for Congress Committee*,
6 640 F. Supp. 985, 987 (D. N.J. 1986). A knowing and willful violation may be established "by
7 proof that the defendant acted deliberately and with knowledge that the representation was false."
8 *United States v. Hopkins*, 916 F.2d 207, 214 (5th Cir. 1990). An inference of a knowing and
9 willful act may be drawn "from the defendant's elaborate scheme for disguising" his or her
10 actions. *Id.* at 214-15.

11 Where a principal grants an agent express or implied authority, the principal generally is
12 responsible for the agent's acts within the scope of his authority.⁴ *See Weeks v. United States*,
13 245 U.S. 618, 623 (1918). Even if an agent does not enjoy express or implied authority,
14 however, a principal may be liable for the agent's actions on the basis of apparent authority. A
15 principal may be held liable based on apparent authority even if the agent's acts are unauthorized,
16 or even illegal, when the principal placed the agent in the position to commit the acts. *See*
17 *Richards v. General Motors Corp.*, 991 F.2d 1227, 1232 (6th Cir. 1993).

³ Section 441f applies to elections for federal office, based on the definition of "contribution" at Section 431(8) and the lack of any contravening language within Section 441f. In other words, Section 441f does not apply to non-federal donations. *U.S. v. Kanchanalak*, 192 F.3d 1037, 1044 (D.C. Cir. 1999).

⁴ The conduct of an agent is within the scope of his authority if: (a) it is the kind he is employed to perform; (b) it occurs substantially within the authorized time and space limits; [and] (c) it is actuated, at least in part, by a purpose to serve the master. Restatement (Second) of Agency § 228(1).

1 **B. FACTUAL SUMMARY**

2 **Centex, a publicly traded company incorporated in Nevada with headquarters in Dallas,**
3 **Texas, complains that Bob L. Moss, the former Chairman, President and CEO of Rooney and the**
4 **former Chairman and CEO of CCG, directed and was the principal financial beneficiary of**
5 **activities in which certain employees at Rooney were reimbursed out of corporate funds for**
6 **federal political contributions, including a gross-up for tax liability. Centex insists that it neither**
7 **knew of nor approved these activities.**

8 **CCG is one of Centex's wholly owned subsidiaries and operates as the umbrella**
9 **organization for regional construction units, including Rooney. CCG is incorporated in Nevada**
10 **and has headquarters in Dallas and Plantation, Florida. Rooney is a construction company with**
11 **commercial building projects primarily in the state of Florida. Bob Moss joined Rooney**
12 **(operating under a different name at that time) in 1986 as Chairman, President, and CEO. In**
13 **early 2000, Mr. Moss was promoted to the position of Chairman and CEO of CCG while**
14 **retaining his title of Chairman at Rooney. Gary Esporin, the CFO of Rooney, was promoted in**
15 **January 2000 by Mr. Moss to co-CFO of CCG while retaining his position as CFO of Rooney.**

16 **In approximately 1997, Brice Hill, then-Chairman, CEO and President of CCG, decided**
17 **to discontinue CCG and Rooney's practice of making non-federal corporate political**
18 **contributions. Employees of Rooney were still encouraged to make political contributions as a**
19 **means of relationship-building, but were asked to do so out of personal funds. On March 4,**
20 **1998, Moss met with Brice Hill and Ken Bailey, then Executive Vice President and COO of**
21 **CCG, to discuss Rooney's political contribution policy. Moss "suggested that individuals'**
22 **political activities and contributions could be recognized just as their community involvement**

2025 RELEASE UNDER E.O. 14176

1 and other relationship building activities were already recognized in the discretionary bonus
2 process." *Statement of Bob Moss, Paragraph 23, Page 5.* Brice Hill reviewed numbers provided
3 by Rooney's CFO Gary Esporin which indicated who had been politically active with respect to
4 making personal political contributions and "approved the plan whereby [Centex-] Rooney
5 would consider political contributions at year-end discretionary bonus time." *Statement of Bob*
6 *Moss, Paragraph 24, Page 5.*

7 Thereafter, Rooney employees were encouraged to inform either Mr. Moss or
8 Mr. Esporin of their contributions and to send copies of contribution checks to Mr. Moss or
9 Mr. Esporin. Mr. Esporin calculated amounts that would reimburse each employee for his
10 contributions and grossed up the amounts to offset any tax liability. These amounts were listed
11 in a bonus spreadsheet under a separate column designated "discretionary management bonuses"
12 and were added to the bonus amounts the employee otherwise would have received from any
13 incentive plan. Mr. Moss ultimately approved these discretionary management bonuses. In
14 addition, CCG's CEO Brice Hill, CCG's CFO Chris Genry and CCG's Vice President of Finance,
15 Mark Layman, who knew of the composition of the discretionary management bonus column,
16 approved the individual bonus amounts. These reimbursements initially were made from a CCG
17 corporate account which was then reimbursed with Rooney corporate funds.

18 According to Centex in its Complaint, eleven different Rooney employees and, in some
19 instances, their spouses, made a total of \$55,875 in federal contributions that were reimbursed
20

55827-004-10-53

1 out of corporate funds between 1998 and 2002.⁵ A chart displaying the source and amounts of
2 the contributions as disclosed by Centex in its Complaint has been attached. See Attachment A.⁶
3 There is no indication that any of the recipient federal committees were aware of the
4 reimbursements.

5 In November, 2002, as part of a larger review of Mr. Moss' management of CCG, Gary
6 Esporin e-mailed Larry Hirsch, CEO of Centex, a list of perceived problems at CCG which
7 included the "questionable campaign contributions" being tracked at the direction of Bob Moss.
8 In January 2003, Larry Hirsch directed the General Counsel of Centex to undertake an
9 investigation of information that suggested that Rooney employees were being reimbursed with
10 corporate funds for individual political contributions. As a result of that investigation, Centex
11 came forward to the Commission regarding the potentially illegal activities of CCG and Rooney.
12 Centex also terminated Bob Moss and removed Gary Esporin from his position as CFO but
13 retained him as an officer of CCG.

14 C. ANALYSIS

15 1. Centex

16 In its response, Centex asserts that it has not violated the Act. While it concedes that its
17 subsidiaries CCG and Rooney may have violated 2 U.S.C. §§ 441b(a) and 441f, Centex argues

⁵ CCG has five other subsidiaries in addition to Rooney: Centex Rodgers, Inc., Centex Southeast, Centex Southwest, Centex Engineering and Construction, and Centex Mid-Atlantic. In a subsequent communication with counsel, this Office learned that although other CCG subsidiaries may have been involved in a similar pattern of reimbursements with respect to state political contributions, only Rooney reimbursed federal contributions. Some of Mr. Moss' and Mr. Esporin's contributions were made after they became CEO and CFO of Rooney's parent, CCG.

⁶ Also attached is a chart displaying \$6,800 in additional federal political contributions by some of these same individuals during the same time periods that were not disclosed by Centex as having been reimbursed. See Attachment B.

0988 "004" 40-22

1 that a parent should not be held liable for the actions of its subsidiary. According to Centex,
2 "[a]ll of the employees who made federal contributions that were reimbursed were employees of
3 Rooney; none were employees of Centex. The funds used to reimburse them came from
4 Rooney's incentive compensation plan, which was based on and funded out of Rooney's profits
5 alone." When asked to clarify this statement, counsel for Centex and Rooney indicated that the
6 reimbursements were initially made from CCG funds but were then reimbursed by Rooney. In
7 addition, Centex alleges that, until January 2003, no "employee, officer, or director of Centex
8 had any knowledge that employees of Rooney were being reimbursed for political contributions
9 on a dollar-for-dollar basis, or was involved in that activity in any way." Because of these
10 assertions, Centex requests that the Commission exercise its discretion not to pursue this Matter
11 against Centex.

12 At this time, there is no evidence of direct involvement by anyone at the Centex parent
13 corporation.⁷ Because of the relative autonomy by which it appears both CCG and Rooney
14 operate, there is no basis at this time to hold the parent company liable for the actions of CCG, its
15 subsidiary, or of CCG's subsidiary, Rooney. Although individual bonuses did need to be
16 approved by Centex, it appears that this was a pro forma exercise, and there is no indication that
17 anyone at Centex was aware that political contributions were one of the items included in the
18 bonuses. Because the investigation of this Matter may reveal additional facts, this Office
19 recommends that the Commission take no action at this time with respect to Centex.

⁷ Although statements made in the responses of both Bob Moss and Gary Esporin refer to "Centex," the context of these statements seem to suggest that those statements are meant to refer to Rooney's immediate parent, CCG.

FORGOTTEN TO SIGN

1 2. **CCG and Rooney**

2 CCG is one of Centex's wholly owned subsidiaries and operates as the umbrella
3 organization for regional construction units, including Rooney. Rooney is a contracting and
4 construction services company incorporated in Florida with its headquarters in Plantation,
5 Florida. Rooney's business consists of public and private commercial construction projects
6 principally in Florida.

7 Rooney admits that it violated Sections 441b(a) and 441f the Act, but asserts that the
8 violations were not knowing and willful. In its Response, Rooney states "that over a five-year
9 period certain Rooney employees made a total of \$55,875 in federal contributions and were
10 reimbursed for those contributions out of corporate funds" in violation of 2 U.S.C. §§ 441b(a)
11 and 441f.⁸ *April 29 Response of Rooney to the Complaint.* Rooney maintains that
12 "contributions were reimbursed because employees' participation in community affairs was felt
13 to benefit Rooney" in the same manner as contributions to state and local candidates, which are
14 permissible under Florida and Georgia law. Rooney has requested that the Commission find
15 reason to believe that it violated 2 U.S.C. §§ 441b(a) and 441f and requests pre-probable cause
16 conciliation.

17 Rooney acknowledges that it was the true source of funds used by the Respondent
18 employees and others to make contributions to federal candidates and committees. Therefore,
19 Rooney violated 2 U.S.C. § 441b(a) by making corporate contributions, and it also violated
20 2 U.S.C. § 441f by making contributions in the name of others.

⁸ This Office has uncovered an additional \$6,800 in federal political contributions made by Rooney employees and their spouses. See Attachment B.

2025-04-10 10:28:22

1 While the available information indicates that the conduct was intentional and thus
2 knowing, there is nothing to indicate that the Respondents were aware that their conduct was
3 illegal. Thus, the willful requirement is not satisfied. Rooney argues that it has acted quickly
4 and responsibly once it learned of the illegal activity and has been fully cooperative with both
5 Centex and CCG in bringing this matter to the Commission's attention. Notwithstanding the use
6 of the term "discretionary management bonus" to reflect political contributions, the available
7 information does not indicate an attempt to conceal the scheme, which would be consistent with
8 a knowing and willful violation of the law by Rooney. Therefore, this Office recommends that
9 the Commission find reason to believe Rooney violated 2 U.S.C. §§ 441b(a) and 441f.

10 According to information provided by Mr. Moss' response, the policy of reimbursing
11 federal political contributions using the Discretionary Management Bonuses was approved at the
12 CCG level by Brice Hill, CEO of CCG; Ken Bailey, COO of CCG, Chris Genry, CFO of CCG
13 and Mark Layman, Vice-President of Finance at CCG.⁹ In addition, counsel for Centex and
14 Rooney has confirmed that the corporate funds used to reimburse the federal political
15 contributions initially came from a CCG account as part of a centralized administrative function,
16 which was then reimbursed by Rooney. Although CCG and these top officials were not
17 previously named as Respondents in this Matter, this Office recommends internally generating
18 CCG, Brice Hill, Ken Bailey, Mark Layman and Chris Genry as Respondents. Each of these new
19 Respondents either made or consented to corporate contributions and assisted in making
20 contributions in the name of another. 2 U.S.C. §§ 441b(a) and 441f. Accordingly, this Office

⁹ Messrs. Hill and Genry are no longer with CCG. Mr. Layman continues to serve as CCG's CFO. Mr. Bailey, in a semi-retired position, is a Senior Vice President of CCG.

1 recommends that the Commission find reason to believe CCG, Brice Hill, Ken Bailey, Chris
2 Genry and Mark Layman violated 2 U.S.C. §§ 441b(a) and 441f.

3 **3. Bob Moss**

4 Mr. Moss was the CEO of Rooney during all applicable times and the CEO of CCG from
5 January 2000 to February 2003. He states in his response that, following his meeting with Brice
6 Hill and Ken Bailey, it was

7 understood that executives would not actually be reimbursed for
8 specific contributions – whether through a grossed-up or dollar-for-
9 dollar reimbursements system. Amongst the proof of this
10 statement is the fact that there was no guarantee that political
11 contributions would even be considered in the compensation
12 process because, unless the company met its minimum profitability
13 thresholds, there would be no bonuses whatsoever.

14
15 Mr. Moss claims that he instructed Mr. Esporin to create and implement a system whereby
16 employees' political contributions would be considered as part of the year-end bonus allocation.
17 Mr. Moss further claims that officials at CCG were aware of Rooney's implementation of Brice
18 Hill's decision to recognize Rooney employees' political contributions in determining year-end
19 bonuses. Likewise, Mr. Moss has asserted that Chris Genry and Mark Layman at CCG "had to
20 know the details and sign off on it each year in order for people to get their bonus checks." In
21 addition, Bruce Moldow, the Executive Vice President and Chief Legal Officer of Rooney, "was
22 involved in ensuring our compliance with the company's 'Political Contributions' document."

23 As the Chairman of Rooney with significant responsibilities in the corporation, Mr. Moss
24 was an officer of the corporation. Section 441b(a) forbids corporate contributions, and also
25 forbids any officer from consenting to the making of a contribution by the corporation. Based on
26 Centex's internal investigation, it appears that Mr. Moss was the individual who suggested and
27

1 directly approved the scheme by which contributions were indirectly made from CCG's and
2 Rooney's general treasury, in violation of 2 U.S.C. § 441b(a). The evidence presented by Centex
3 and uncovered by this Office also suggests that Mr. Moss made \$44,425 in federal contributions
4 in his own name for which he was reimbursed via the scheme alleged by Centex, knowingly
5 permitting his name to be used to effect the contributions, in violation of 2 U.S.C. § 441f. See
6 Attachments A and B. The evidence also suggests Mr. Moss knowingly assisted other persons in
7 making contributions by CCG and Rooney in the name of those persons. 2 U.S.C. § 441f; 11
8 C.F.R. § 110.4(b)(1)(iii). This Office recommends, therefore, that the Commission find reason to
9 believe that Mr. Moss violated Sections 441b(a) and 441f of the Act.

10 In addition, Sandra Moss, wife of Bob Moss, also made \$3,000 in federal political
11 contributions during this time period for which Mr. Moss submitted checks to Mr. Esporin and
12 was apparently reimbursed in his Discretionary Management Bonus. Accordingly, this Office
13 recommends that the Commission find there is reason to believe that Sandra Moss violated
14 2 U.S.C. § 441f.

15 **4. Gary Esporin**

16 Gary Esporin was the CFO of Rooney and later the co-CFO of CCG. Following their
17 internal investigation, Centex removed Mr. Esporin from the CFO positions. In November
18 2002, Mr. Esporin reported himself and his superior, Bob Moss, to Larry Hirsch, CEO of
19 Centex. According to Mr. Esporin, Hirsch asked Esporin to perform a "cost-benefit analysis"
20 of keeping Mr. Moss employed with Rooney. As part of that evaluation, Mr. Esporin reported
21 to Mr. Hirsch that Bob Moss was engaging in activities involving "questionable political
22 contributions" which eventually led to Centex's self-reporting to the Commission.

5982-904-40-37

1 Mr. Esporin states that although the activities involving the "discretionary management
2 bonuses" never felt quite right to him, he "saw correspondence and notes by and between"
3 superior officers and their lawyers which led him to believe that the discretionary management
4 bonuses were legal and had been approved by the Audit Review Committee. In fact,
5 Mr. Esporin states in his response that the campaign contribution reimbursement program was
6 factored into the approved corporate budget, after review by the budget committee and the Audit
7 Review Committee. Because of his unfamiliarity with the Commission's process, counsel for
8 Mr. Esporin has requested resolution through either conciliation or the ADR process.

9 This Office recognizes the seeming inconsistencies in Mr. Esporin's statements. On the
10 one hand, Mr. Esporin characterizes himself as the whistle-blower who brought Mr. Moss'
11 alleged wrongdoing to their employer's notice because the bonus scheme never felt quite right to
12 him. On the other hand, he was an officer of the company who consented to the use of corporate
13 funds for making political contributions. In addition, Mr. Esporin also made \$2,000 in federal
14 contributions during this time period that were reimbursed using CCG and Rooney funds in his
15 Discretionary Management Bonus and also assisted in the reimbursement of other employees.
16 Therefore, this Office recommends that the Commission find reason to believe that Gary
17 Esporin violated 2 U.S.C. §§ 441b and 441f.

18 **5. Other Employees**

19
20 **a. Employees who submitted copies of their checks**

21
22 Bruce Moldow joined Rooney in October 1996 as an Executive Vice President and
23 General Counsel. In January 2000 he was promoted to a Senior Vice President and Co-Chief
24 Legal Officer of CCG, while keeping his General Counsel position at Rooney. Moldow reported

1 to Bob Moss. Although Mr. Moldow admits to making three federal political contributions
2 totaling \$1,500 for which he was reimbursed, he denies both requesting and knowledge of
3 reimbursement. He also denies being consulted at any time about the propriety of making
4 reimbursements. However, he admits that he was aware Rooney kept track of contributions its
5 employees made and that he provided information about his contributions to Mr. Esporin. He
6 also "knew that Bob Moss reviewed and set the discretionary bonuses for Rooney employees and
7 that community activities, including the making of political contributions, would be considered
8 as a factor in the bonus process." Mr. Moldow requests that no action be taken against him by
9 the Commission, because he purportedly did not know there would be a dollar-for-dollar
10 reimbursement.

11 Ted Adams, Gary Glenewinkel, Albert Petrangeli, Raymond Southern and Michael
12 Wood, all of whom hold managerial positions at Rooney, are represented by the same counsel
13 and submitted a joint response. These respondents claim that no action should be taken against
14 them because they did not violate the Act. According to their response to the Complaint, their
15 actions consisted of making "voluntary political contributions on their own behalf" and then later
16 submission of "copies of their contribution checks to their employer . . . with the belief that
17 [Centex-] Rooney and its parent company wanted to keep track of its managers' political
18 contributions." They admit to making federal political contributions and reporting them to either
19 Mr. Moss or Mr. Esporin. Mr. Adams made \$500 in federal political contributions;
20 Mr. Glenewinkel made \$3,700 in federal political contributions; Mr. Petrangeli made \$500 in

2002 OCT 10 11:23

1 federal political contributions; Mr. Southern made \$1,500 in federal political contributions; and
2 Mr. Wood made \$1,000 in federal political contributions.¹⁰ See Attachments A and B.

3 All of these Respondent employees admit to making federal political contributions and
4 submitting copies of checks to either Mr. Moss or Mr. Esporin. All Respondent employees
5 understood that Rooney looked favorably upon those who made political contributions and
6 wanted to track these contributions. All of the Respondent employees received Discretionary
7 Management Bonuses during the relevant time period, a portion of which was comprised of a
8 reimbursement of the political contributions made in that fiscal year, grossed-up to offset any tax
9 liability. In addition, Mr. Esporin states in his Supplemental Response that "all of the involved
10 employees/beneficiaries knew that they were reimbursed for these contributions. Mr. Esporin
11 had conversations with these employees at the involved time periods and received photocopies of
12 checks written by these employees, submitted by the employees for the very purpose of being
13 reimbursed." Therefore, this Office recommends that the Commission find reason to believe that
14 Bruce Moldow, Ted Adams, Gary Glenewinkel, Albert Petrangeli, Raymond Southern and
15 Michael Wood violated 2 U.S.C. § 441f.

16 D.J. McGlothern received reimbursement from Gary Glenewinkel for \$1,000 in federal
17 political contributions. Mr. Glenewinkel was then reimbursed through the Discretionary
18 Management Bonus scheme. Therefore, the bonus scheme was used to reimburse

¹⁰ Two of the four 1999 contributions attributed to Mr. Glenewinkel in the Complaint were reimbursements that he made to D.J. McGlothern, who actually made the contributions. Mr. Glenewinkel reimbursed Mr. McGlothern for the contributions "in an attempt to ease the strain of Mr. McGlothern's out-of-pocket expenses" and then provided Mr. Esporin with copies of the checks "in order to keep him informed of the political contributions made by members of the business unit Mr. Glenewinkel supervised." Ultimately, Mr. Glenewinkel was reimbursed for the two McGlothern contributions via his 1999 Discretionary Management Bonus.

1 Mr. McGlothern's contributions. Hence, this Office also recommends that the Commission find
2 reason to believe that D.J. McGlothern violated 2 U.S.C. § 441f.

3 In addition, because spouses of Respondent employees also made federal political
4 contributions during this time period for which the employee spouse submitted a check to either
5 Mr. Moss or Mr. Esporin and was apparently reimbursed in their Discretionary Management
6 Bonuses, this Office recommends that the Commission find there is reason to believe that
7 Kathryn Young (wife of Gary Glenewinkel) and Robin McGlothern violated 2 U.S.C. § 441f.

8 **b. Employees who gave contributions directly to Bob Moss**

9 Larry Casey and David Hamlin are represented by the same counsel and submitted a joint
10 response. Mr. Casey is a Senior Vice President of Marketing and Sales at Rooney. Mr. Hamlin
11 is a Senior Vice President and Chief Estimator at Rooney. Both men admit to making a single
12 contribution during the relevant time period, but deny requesting reimbursement or having
13 knowledge that their contributions had been reimbursed.¹¹

14 In February 2000, both men were asked if they were interested in making a contribution
15 to the Tom Gallagher for U.S. Senate committee. Bob Moss had arranged a Gallagher campaign
16 fundraiser. Mr. Casey and Mr. Hamlin wrote \$500 checks and submitted them directly to Bob
17 Moss and Mr. Moss' secretary, respectively. This action is different from the usual way
18 contributions were handled in that it was usually photocopies of checks which were submitted to
19 Mr. Moss or Mr. Esporin, not the original checks. Counsel for Messrs. Casey and Hamlin
20 requests that no action be taken because they purportedly were unaware of any reimbursement.

¹¹ An additional contribution by Larry Casey that was not listed in the Complaint was uncovered by this Office. See Attachment B.

5982-904-40-22

1 Messrs. Casey and Hamlin admit to making political contributions and submitting
2 original checks to Mr. Moss. They both understood that Rooney looked favorably upon those
3 who made political contributions and wanted to track these contributions. Unlike the other
4 employees, they did not submit copies of checks to the accounting department. Nevertheless,
5 they received Discretionary Management Bonuses during the relevant time period, a portion of
6 which was comprised of a reimbursement of the political contributions made in that fiscal year,
7 grossed-up to offset any tax liability. In addition, Mr. Esporin states in his Supplemental
8 Response that "all of the involved employees/beneficiaries knew that they were reimbursed for
9 these contributions." Further, Mr. Esporin specifically states in his response that Messrs. Casey
10 and Hamlin would not have made business-related expenses such as these political contributions
11 without "advance knowledge of reimbursement." *See April 7 Supplemental Response of Gary*
12 *Esporin, Paragraphs 6 and 8.* Therefore, this Office recommends that the Commission find
13 reason to believe that Larry Casey and David Hamlin violated 2 U.S.C. § 441f.

14 6. Candidate Committees

15 The treasurer of a political committee is responsible for examining all contributions
16 received by the political committee for evidence of legality. 11 C.F.R. § 103.3(b). Contributions
17 that present genuine questions as to whether they were made by legal sources may be deposited
18 into a campaign depository or returned to the contributor. If any such contribution is deposited,
19 the treasurer shall make his or her best efforts to determine the legality of the contribution.
20 11 C.F.R. § 103.3(b)(1). If the treasurer determines that at the time a contribution was received
21 and deposited, it did not appear to be made in the name of another, but later discovers that it is
22 illegal based on new evidence not available to the political committee at the time of receipt and

0282-904-40-52

1 deposit, the treasurer shall refund the contribution to the contributor within thirty days of the date
2 on which the illegality was discovered. 11 C.F.R. § 103.3(b)(2). Advisory Opinion 1995-19
3 states that under circumstances where questions arise as to the legality of a contribution, it is the
4 duty of the recipient organization to use "best efforts" to determine the legality of the funds and
5 then to refund any funds which it determined to be illegal. AO 1995-19, p. 3, 2 Fed. Election
6 Camp. Fin. Guide [CCH] ¶ 6156 at p. 12,098.

7 The recipient committees have not been notified in this matter. At this time, there is no
8 evidence that they had any knowledge that the contributions they received from the Respondents
9 were tainted. Accordingly, this Office makes no recommendation at this point regarding the
10 recipient committees but anticipates recommending that the Commission inform the committees
11 of their duty to disgorge the illegally obtained contributions at the close of the case.

12 **III. PROPOSED POST-REASON TO BELIEVE ACTIONS AND DISCOVERY**

13 All of the respondents have indicated their willingness to cooperate with the
14 Commission's investigation. At this time, this Office feels that adequate information will be
15 gleaned from informal interviews and conversations with counsel, and that formal discovery will
16 not be necessary. This Office has already received phone calls from all of the Respondents'
17 counsel on various topics, and believes that continued communication in this manner would be
18 most beneficial.

19 In addition, this Office recommends that the Commission authorize this Office to enter
20 into pre-probable cause conciliation with all of the Respondents except Centex. This Office
21 anticipates submitting conciliation agreements for the Commission's approval after it has
22 conducted a brief investigation to confirm that all violations are uncovered.

1282-904-40-52

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

IV. RECOMMENDATIONS

1. Merge Pre-MUR 412 into MUR 5357;
2. Take no action at this time against Centex Corporation;
3. Find reason to believe that Centex-Rooney Construction Co., Inc. violated 2 U.S.C. §§ 441b(a) and 441f and enter into pre-probable cause conciliation;
4. Find reason to believe Centex Construction Group, Inc., Brice Hill, Ken Bailey, Chris Genry and Mark Layman violated 2 U.S.C. §§ 441b(a) and 441f and enter into pre-probable cause conciliation;
5. Find reason to believe that Bob Moss violated 2 U.S.C. §§ 441b(a) and 441f and enter into pre-probable cause conciliation;
6. Find reason to believe that Gary Esporin violated 2 U.S.C. § 441f and enter into pre-probable cause conciliation;
7. Find reason to believe that Bruce Moldow, Ted Adams, Gary Glenewinkel, Albert Petrangeli, Raymond Southern, Michael Wood, D.J. McGlothern, Sandra Moss, Robin McGlothern, and Kathryn Young violated 2 U.S.C. § 441f and enter into pre-probable cause conciliation;
8. Find reason to believe that Larry Casey and David Hamlin violated 2 U.S.C. § 441f and enter into pre-probable cause conciliation;
9. Approve the appropriate Factual and Legal Analyses;

23.04.406.2872

1 10. Approve the appropriate letters.

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

9/5/03
Date

Lawrence H. Norton
General Counsel

BY: Rhonda J. Vosdingh
Rhonda J. Vosdingh
Associate General Counsel

Mark D. Shonkwiler
Mark D. Shonkwiler
Assistant General Counsel

April J. Sands
April J. Sands
Attorney

Attachment:

- A. 1997-2002 Contributions disclosed by the Complaint
- B. Federal Political Contributions not disclosed by the Complaint

23.04.406.2873

**FEDERAL POLITICAL CONTRIBUTIONS MADE BY ROONEY EMPLOYEES
DISCLOSED BY CENTEX IN ITS COMPLAINT**

<u>Date</u>	<u>Respondent</u>	<u>Recipient Political Committee</u>	<u>Total</u>	<u>Source of Information</u>
03/21/2000	Albert Petrangeli	Friends of Dave Weldon	\$500	Complaint
07/25/1996	Bob Moss	Friends of Bob Graham Committee	\$1,000	Complaint
12/14/1997	Bob Moss	Bill McCollum for Senate	\$500	Complaint
01/30/1998	Bob Moss	Friends of Bob Graham for Senate	\$500	Complaint
07/9/1998 ¹	Bob Moss	Friends of Bob Graham for Senate	\$1,000	Complaint
04/7/1999	Bob Moss	Friends of Clay Shaw	\$1,000	Complaint
04/8/1999	Bob Moss	Bill McCollum for Senate	\$1,000	Complaint
05/15/1999	Bob Moss	Florida Republican Party (Fed)	\$5,000	Complaint
06/17/1999	Bob Moss	Bush for President	\$1,000	Complaint
11/19/1999	Bob Moss	Bill McCollum for Senate	\$500	Complaint
12/28/1999 ²	Bob Moss	Bill McCollum for Senate	\$500	Complaint
3/27/2000	Bob Moss	Florida Republican Party (Fed)	\$5,000	Complaint
4/28/2000 ³	Bob Moss	Friends of Clay Shaw	\$500	Complaint
5/11/2000 ⁴	Bob Moss	Republican National Comm.	\$20,000	Complaint
10/3/2000	Bob Moss	Friends of Clay Shaw	\$500	Complaint
07/18/2001	Bob Moss	Friends of Clay Shaw	\$175	Complaint
03/20/2002 ⁵	Bob Moss	Friends of Clay Shaw	\$2,000	Complaint
11/19/1999	Bruce Moldow	Bill McCollum for Senate	\$500	Complaint
02/15/2000	Bruce Moldow	Tom Gallagher for U.S. Senate	\$500	Complaint

¹ No record of contribution receipt in candidate filings.

² \$500 of the contribution was reattributed to Mr. Moss' wife, Sandra Moss.

³ Check records indicate Bob Moss made contribution. The campaign reported the contribution as made by Sandra Moss, wife to Bob Moss.

⁴ Contribution was to the RNC Federal account.

⁵ Check records indicate Bob Moss made the contribution. The campaign reported the contribution as made by Sandra Moss, wife to Bob Moss.

<u>Date</u>	<u>Respondent</u>	<u>Recipient Political Committee</u>	<u>Total</u>	<u>Source of Information</u>
03/20/2002	Bruce Moldow	Friends of Clay Shaw	\$500	Complaint
02/15/2000	David Hamlin	Tom Gallagher for U.S. Senate	\$500	Complaint
02/14/2000	Gary Esporin	Tom Gallagher for U.S. Senate	\$500	Complaint
11/19/2000	Gary Esporin	Bill McCollum for Senate	\$500	Complaint
03/22/2002	Gary Esporin	Friends of Clay Shaw	\$500	Complaint
10/15/1999 ⁶	D.J. McGlothern	Corrine Brown for Congress	\$500	Complaint
11/04/1999 ⁷	D.J. McGlothern	Bush for President	\$500	Complaint
11/23/1999	Gary Glenewinkel	Bill McCollum for Senate	\$500	Complaint
12/09/1999	Gary Glenewinkel	ABC/PAC	\$500	Complaint
02/14/2000	Gary Glenewinkel	Tom Gallagher for U.S. Senate	\$500	Complaint
03/21/2000 ⁸	Kathryn Young (spouse)	Bill McCollum for Senate	\$500	Complaint
05/11/2000	Gary Glenewinkel	Friends of Clay Shaw	\$1,000	Complaint
9/28/2000 ⁹	Gary Glenewinkel	Bush for President	\$100	Complaint
03/21/2001 ¹⁰	Gary Glenewinkel	ABC/PAC	\$100	Complaint
03/20/2002	Gary Glenewinkel	Friends of Clay Shaw	\$1,000	Complaint
10/11/2000 ¹¹	Kathryn Young (spouse)	Friends of Clay Shaw	\$1,000	Complaint
02/14/2000	Larry D. Casey	Tom Gallagher for U.S. Senate	\$500	Complaint
12/14/1997	Mike Wood	Bill McCollum for Senate	\$500	Complaint
09/27/1998	Mike Wood	Bill McCollum for Senate	\$500	Complaint
06/25/1999	Raymond C. Southern	Bush for President	\$1,000	Complaint
02/15/2000	Raymond C. Southern	Tom Gallagher for U.S. Senate	\$500	Complaint

⁶ Contribution was made by D.J. McGlothern, a Rooney employee. Mr. Glenewinkel wrote a check to reimburse Mr. McGlothern and submitted a copy of this check for inclusion in this FY 2000 bonus calculation.

⁷ Contribution was made by D.J. McGlothern, a Rooney employee. Mr. Glenewinkel wrote a check to reimburse Mr. McGlothern and submitted a copy of this check for inclusion in this FY 2000 bonus calculation.

⁸ Contribution was made by Mr. Glenewinkel's wife, Kathryn Young.

⁹ Contribution did not require individual itemization in disclosure report.

¹⁰ Contribution did not require individual itemization in disclosure report.

¹¹ Contribution was made by Mr. Glenewinkel's wife, Kathryn Young.

<u>Date</u>	<u>Respondent</u>	<u>Recipient Political Committee</u>	<u>Total</u>	<u>Source of Information</u>
12/14/1997	Sandra Moss (spouse)	Bill McCollum for Senate	\$500	Complaint
09/16/1998	Sandra Moss (spouse)	Friends of Bob Graham for Senate	\$1,000	Complaint
12/28/1999	Sandra Moss (spouse)	Bill McCollum for Senate	\$500	Complaint
11/04/1999	Ted Adams	Bush for President	\$500	Complaint
		TOTAL	\$55,875.00	

FEDERAL POLITICAL CONTRIBUTIONS MADE BY ROONEY EMPLOYEES
AS REVEALED BY FEC WEBSITE AND NOT DISCLOSED IN THE COMPLAINT

<u>Date</u>	<u>Respondent</u>	<u>Recipient Political Committee</u>	<u>Total</u>	<u>Source of Information</u>
10/03/1997	Bob Moss	Friends of Clay Shaw	\$250	KEA
02/09/1998	Bob Moss	Friends of Bob Graham Committee	\$1,000	KEA
09/21/1998	Bob Moss	Friends of Bob Graham Committee	\$1,000	KEA
05/03/1999	Bob Moss	Friends of Clay Shaw	\$1,000	KEA
01/21/2000	Bob Moss	Bill McCollum for Senate	\$1,000	KEA
11/30/1999	Gary Esporin	Bill McCollum for Senate	\$500	KEA
05/05/2000	Kathryn Young (spouse)	Bill McCollum for Senate	\$500	KEA
05/26/1998	Larry D. Casey	Friends of Bob Graham Committee	\$250	KEA
06/25/2002	Robin McGlothem (spouse)	Brown-Waite for Congress	\$300	KEA
01/21/2000	Sandra Moss (spouse)	Bill McCollum for Senate	\$500	KEA
05/04/2000	Sandra Moss (spouse)	Friends of Clay Shaw	\$500	KEA
		TOTAL	\$6,800.00	

**FEDERAL POLITICAL CONTRIBUTIONS MADE BY ROONEY EMPLOYEES
AS REVEALED BY FEC WEBSITE AND NOT DISCLOSED IN THE COMPLAINT**

<u>Date</u>	<u>Respondent</u>	<u>Recipient Political Committee</u>	<u>Total</u>	<u>Source of Information</u>
10/03/1997	Bob Moss	Friends of Clay Shaw	\$250	KEA
02/09/1998	Bob Moss	Friends of Bob Graham Committee	\$1,000	KEA
09/21/1998	Bob Moss	Friends of Bob Graham Committee	\$1,000	KEA
05/03/1999	Bob Moss	Friends of Clay Shaw	\$1,000	KEA
01/21/2000	Bob Moss	Bill McCollum for Senate	\$1,000	KEA
11/30/1999	Gary Esporin	Bill McCollum for Senate	\$500	KEA
05/05/2000	Kathryn Young (spouse)	Bill McCollum for Senate	\$500	KEA
05/26/1998	Larry D. Casey	Friends of Bob Graham Committee	\$250	KEA
06/25/2002	Robin McGlothern (spouse)	Brown-Waite for Congress	\$300	KEA
01/21/2000	Sandra Moss (spouse)	Bill McCollum for Senate	\$500	KEA
05/04/2000	Sandra Moss (spouse)	Friends of Clay Shaw	\$500	KEA
		TOTAL	\$6,800.00	